ABHW

Mental Health Parity

Washington, DC

About ABHW

The Association for Behavioral Health and Wellness (ABHW) is dedicated to advancing federal policy and educating the public on mental health disorders and addiction care. ABHW is the national voice for payers that manage behavioral health insurance benefits. ABHW member companies provide coverage to over 200 million people in both the public and private sectors to treat mental health disorders, substance use disorders, and other behaviors that impact wellness.

Founded in 1994, ABHW is a respected leader in the behavioral health and medical arena. Poised to effect policy change, ABHW provides thought leadership and advocates for regulations and policies that help provide high quality health care to promote healthy living and improved quality of life.

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ABHW Pillars

- INCREASE ACCESS
- DRIVE INTEGRATION
- SUPPORT PREVENTION
- RAISE AWARENESS AND REDUCE STIGMA
- ADVANCE EVIDENCE-BASED TREATMENT AND QUALITY OUTCOMES

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ABHW Priorities

- Mental Health Parity
- Telehealth
- Medication-Assisted Treatment
- Workforce
- 42 CFR Part 2

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Mental Health Parity and Addiction Equity Act (MHPAEA): Overview

- Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”) enacted October 3, 2008.
- Requires that financial requirements and treatment limitations on mental health or substance use disorder benefits (MH/SUD) are no more restrictive than those on medical or surgical (med/surg) benefits.
- Facilitates access to mental health and addiction treatment by eliminating discriminatory restrictions on mental health or substance use disorder coverage and other barriers placed on treatment.
- Applies to benefits to treat opioid use disorder and helps to protect access to treatment during the opioid crisis.
- Oversight and enforcement have steadily increased over the years and are now requiring comprehensive, organizational culture changes; analogous to the roll-out and adoption of HIPAA throughout the industry.

Nonquantitative Treatment Limitations (NQTLs)

- The Regulations established both quantitative (QTL) and nonquantitative (NQTL) treatment limitations.
- NQTL- benefit standard not expressed numerically, but otherwise limits the scope or duration of benefits for treatment.
- NQTL can only be imposed on MH/SUD benefits if “process, strategies, evidentiary standards or other factors” are comparable to the medical surgical side.

Payer Actions for MHPAEA Compliance

- ABHW and its members have supported MHPAEA since its inception.
- Although ambiguities exist on how to comply with the regulation, our members have not waited to comply.
- Since the passage of the MHPAEA, ABHW member companies have diligently worked to drive consistent interpretation and enforcement of the law across the United States.

Payer Actions for MHPAEA Compliance con’t.

- Over the years our members have:

  - Improved access to behavioral health treatment, services, and providers;
  - Aligned behavioral health co-payments with medical visit co-pays;
  - Eliminated treatment limitations on the number of days of coverage for a condition, as well as financial limits on annual and lifetime dollar caps;
  - Adjusted prior authorization requirements for mental health and substance use disorder services so that they are comparable to those applied to medical benefits; and
  - Integrated medical, pharmacy, and behavioral health benefits to increase consumer engagement and reduce overall medical costs.

Consolidated Appropriations Act, 2021 (CAA)

- Effective date: February 10, 2021.
- Require group health plans and health insurance issuers to make available to HHS, DOL, Treasury as well as state authorities a comparative analysis of NQTL compliance.
- Requires annual report to Congress.
- Adds “name and shame” provisions.
- Codifies a step-wise NQTL compliance approach contained in the DOL self-compliance tool, which was previously voluntary.

CAA, con’t.

- Comparative analyses should include detailed specific reasons showing that the processes, strategies, evidentiary standards used to develop NQTLs are comparable and applied no more stringently to MH/SUD benefits than to medical surgical benefits.
- Plans and insurers should be prepared to make available documents that support their comparative analyses and conclusions of their NQTL.
- If Departments determine that the plan or insurer is not compliant with the MHPAEA, following a 45-day corrective action period, the plans and insurers must notify all individuals enrolled in the plan or coverage that the coverage is determined to be noncompliant with MHPAEA.

Regulatory Actions Pursuant to CAA

- DOL, HHS, and Treasury subsequently issued guidance on the CAA mental health parity provisions in April 2021 in the form of frequently asked questions (FAQs). The FAQs:
  - Identify what is not sufficient
  - Clarify that supporting documentation is required
  - Identify NQTL focus areas for the short term
- FAQs are a step in the right direction but do not provide enough clarity to do a compliant analysis.

Payer Perspective on CAA and Subsequent FAQs

- ABHW appreciates the high-level information in the FAQs, but more specificity is needed.

- Specifically, we asked for:

  - A set of core NQTLs
  - A comprehensive example for each core NQTL
  - Take actions to promote uniformity between state and federal regulators.

Payer Perspective on 2022 MHPAEA Report to Congress

- Appreciate that regulators did not name any payers in this report as investigations are still underway.
- ABHW agrees with a number of DOL's findings related to substantive findings of non-compliance – considers these low hanging fruit.
- There is a distinction between substantive compliance vs. documentation of compliance.
- Significant ambiguity remains regarding the threshold of compliance.
- More guidance is needed on the appropriate scope and design of comparative analysis for NQTLs
- Look forward to working with regulators on the forthcoming NPRM.

Proposed Next Steps for Better Compliance

- Reiterate the need for core set of NQTLs, and an example for each.
- Develop guidance regarding threshold for compliance.
- Clearly define protocols and priorities for investigations.
- Establish an appeals process.
- Establish safe harbors.
- Promulgate guidance for States to ensure alignment with federal practices.
- Efforts to recognize that not every issue related to mental health services is a mental health parity issue.

Contact Information

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